

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

BETTY MCCUSITON,

Plaintiff,

v.

CAROLYN W. COLVIN,
Acting Commissioner of Social Security,

Defendant.

Case No. 16-CV-1555-JPS

ORDER

Betty McCusiton filed a complaint in this matter and a motion for leave to proceed without prepayment of the filing fee. (Docket #1, #3). The Court may grant the plaintiff's motion to proceed without prepayment of the filing fee if it determines that: (1) the plaintiff is truly indigent and unable to pay the costs of commencing this action; and (2) the plaintiff's action is neither frivolous nor malicious. 28 U.S.C. §§ 1915(a), (e)(2).

As to the first requirement, the privilege to proceed without payment of costs and fees "is reserved to the many truly impoverished litigants who...would remain without legal remedy if such privilege were not afforded to them." *Brewster v. North Am. Van Lines, Inc.*, 461 F.2d 649, 651 (7th Cir. 1972).

The plaintiff's motion to proceed without prepayment of the filing fee details her monthly expenses and income. The plaintiff has no assets, \$23.00 in checking and savings, and her monthly expenses for herself and her two children equal approximately her monthly income. As such, the Court is satisfied that the plaintiff is indigent and cannot afford the filing fee.

The plaintiff's action is not frivolous or malicious. The plaintiff submitted a complaint, which includes an allegation that the Administrative Law Judge ("ALJ") erred in reaching a decision. (Docket #1). If that contention is true, then the Court will be obliged to vacate the ALJ's decision. Thus, the plaintiff's action is neither frivolous nor malicious.

For those reasons, the Court will grant the plaintiff's motion for leave to proceed without prepayment of the filing fee.

Accordingly,

IT IS ORDERED that the plaintiff's motion for leave to proceed without prepayment of the filing fee (Docket #3) be and the same is hereby **GRANTED**.

Dated at Milwaukee, Wisconsin, this 2nd day of December, 2016.

BY THE COURT:

s/ J. P. Stadtmueller

J.P. Stadtmueller

U.S. District Judge